

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

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APPEARANCES:

WASSERMAN, JURISTA & STOLZ

Attorneys for Official Committee of Unsecured

Creditors

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HARRY GUTFLEISH, ESQ.

Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Court considers the Fourth Interim Fee Application ("Fee Application") of Zolfo Cooper, LLC ("ZC") financial advisor to the Official Committee of Unsecured Creditors ("Committee"). The Fee Application seeks payment of professional fees in the amount of \$102,596.50 and reimbursement of expenses in the sum of \$1,477.06 incurred during the period from March 1, 1997 to June 30, 1997. The Fee Application was submitted to Stuart, Maue, Mitchell & James, Ltd. ("Fee Auditor") in accordance with the Court's Amended Order dated December 2, 1996, regarding fee applications subject to review by the Fee Auditor. The report of the Fee Auditor ("Report") was filed with the Court on November 14, 1997, and a hearing on the Fee Application was held on December 16, 1997, at which time the Court awarded ZC a provisional award of \$50,000 in fees and \$1,477.06 in expenses. Following the December 16th hearing the Fee Application was submitted for further review and a written decision.

### JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), (b)(1) and (b)(2)(A) and (O).

### FACTS AND DISCUSSION

ZC has filed three prior interim fee applications with this Court and has to date been awarded \$245,733 in total fees and \$10,540 in total disbursements.

The Fee Auditor performed a review of ZC's Fee Application and submitted the aforementioned Report to assist the Court in its analysis of the Fee Application. The Fee Auditor identified various time and expense entries that appeared to violate Court guidelines or that were brought to the Court's attention for further review. On December 11, 1997, ZC responded to the Report of the Fee Auditor ("response") and also submitted the Affidavit of Steven M. Ostrer ("Ostrer Affidavit"), the Chairman of the Creditors Committee.

With regard to the assertion that it has over utilized multiple-participants at various intra-office conferences, etc., ZC points out that utilizing two of its professionals at a meeting or conference is not duplicative since one representative was there to develop strategic solutions while the other representative provided the Committee with a financial and business analysis. The Ostrer Affidavit supports the concept of two ZC representatives at meetings and conferences generally concluding that "Given the sophisticated issues being addressed at these meetings, the Committee does not believe that this level of effort should be characterized as overstaffing. *See*

Ostrer Affidavit at ¶ 4).

The Court notes that in the Fourth Interim Application only \$9,356 of the total \$102,596.50 being sought results from the attendance of multiple professionals at the same meetings or conferences. This represents a significant decrease in such services from those contained in ZC's Third Interim Application.

The only other area of the current application focused on by the Court is the time devoted to Fee Applications, which the Fee Auditor identified as consuming 21.3 hours and representing \$5,701 in fees. Because application of the Court's 3% rule<sup>1</sup> would result in a de minimis award for these services, the Court will approve a fee of \$750.00 for services rendered in connection with the preparation of ZC's Fee Application.

Finally, with regard to ZC's request for reimbursement of expenses, the Fee Auditor identifies for the Court's consideration what it designates as "delivery service." While ZC has apparently not provided any supporting documentation for this disbursement, the Court makes no adjustment in the request for reimbursement.

In summary, the Court approves ZC's Fee Application in the sum of \$97,645.50 in fees and \$1,477.06 in expenses. Crediting the Trustee in the cases with the \$50,000 provisional award of fees and \$1,477.06 in expenses, ZC shall recover an additional \$47,645.50.

IT IS SO ORDERED.

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<sup>1</sup> On February 9, 1998, the Court issued its Memorandum-Decision in reconsideration of Simpson, Thacher & Bartlett's Second Interim Fee Application in which it adopted the so-called 3% rule. Following that Memorandum-Decision, the Court with a limited exception has not approved an amount which exceeds 3% of the total fees billed for services relating to preparation and defense of various professional' fee applications.

Dated at Utica, New York

this 20th day of August 1998

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge